

AMENDMENTS TO LB103

(Amendments to Standing Committee amendments, AM878)

Introduced by DeBoer, 10.

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 **Section 1.** Section 27-412, Revised Statutes Cumulative Supplement,
4 2024, is amended to read:

5 27-412 (1) The following evidence is not admissible in any civil or
6 criminal proceeding involving alleged sexual misconduct except as
7 provided in subsections (2) and (3) of this section:

8 (a) Evidence offered to prove that any victim engaged in other
9 sexual behavior or has been the victim of any other sexual assault; and

10 (b) Evidence offered to prove any victim's sexual predisposition.

11 (2)(a) In a criminal case, the following evidence is admissible, if
12 otherwise admissible under the Nebraska Evidence Rules:

13 (i) Evidence of specific instances of sexual behavior by the victim
14 offered to prove that a person other than the accused was the source of
15 semen, injury, or other physical evidence;

16 (ii) Evidence of specific instances of sexual behavior of the victim
17 with respect to the accused offered by the accused to prove consent of
18 the victim if it is first established to the court that such behavior is
19 similar to the behavior involved in the case and tends to establish a
20 pattern of behavior of the victim relevant to the issue of consent; and

21 (iii) Evidence, the exclusion of which would violate the
22 constitutional rights of the accused.

23 (b) In a civil case, evidence offered to prove the sexual behavior
24 or sexual predisposition of any victim is admissible if it is otherwise
25 admissible under the Nebraska Evidence Rules and its probative value
26 substantially outweighs the danger of harm to any victim and of unfair

1 prejudice to any party. Evidence of a victim's reputation is admissible
2 only if it has been placed in controversy by the victim.

3 (3)(a) A party intending to offer evidence under subsection (2) of
4 this section shall:

5 (i) File a written motion at least fifteen days before trial
6 specifically describing the evidence and stating the purpose for which it
7 is offered unless the court, for good cause, requires a different time
8 for filing or permits filing during trial; and

9 (ii) Serve the motion on all parties and notify the victim or, when
10 appropriate, the victim's guardian or representative.

11 (b) Before admitting evidence under this section, the court shall
12 conduct a hearing in camera outside the presence of any jury.

13 (4) Evidence of the victim's consent is not admissible in any civil
14 proceeding involving alleged:

15 (a) Sexual penetration when the actor is nineteen years of age or
16 older and the victim is less than sixteen years of age; or

17 (b) Sexual contact when the actor is nineteen years of age or older
18 and the victim is less than fifteen years of age.

19 **Sec. 2.** Section 29-1917, Revised Statutes Cumulative Supplement,
20 2024, is amended to read:

21 29-1917 (1) Except as provided in section 29-1926, at any time after
22 the filing of an indictment or information in a felony prosecution, the
23 prosecuting attorney or the defendant may request the court to allow the
24 taking of a deposition of any person other than the defendant who may be
25 a witness in the trial of the offense. The court may order the taking of
26 the deposition when it finds the testimony of the witness:

27 (a) May be material or relevant to the issue to be determined at the
28 trial of the offense; or

29 (b) May be of assistance to the parties in the preparation of their
30 respective cases.

31 (2) An order granting the taking of a deposition shall include the

1 time and place for taking such deposition and such other conditions as
2 the court determines to be just.

3 (3) Except as provided in subsections subsection (4) and (5) of this
4 section, the proceedings in taking the deposition of a witness pursuant
5 to this section and returning it to the court shall be governed in all
6 respects as the taking of depositions in civil cases, including section
7 25-1223.

8 (4)(a) If the prosecuting attorney or defendant seeks to question a
9 witness at a deposition under this section regarding evidence admissible
10 under subsection (2) of section 27-412 or regarding a prior alleged false
11 allegation of sexual assault, such party shall state notice of intent to
12 do so in the motion to depose the witness. Such notice shall not include
13 the name or any identifying information of the witness, nor the grounds
14 upon which the moving party believes such evidence may be relevant and
15 admissible.

16 (b) If the opposing party objects to questioning described in
17 subdivision (4)(a) of this section, such party shall file a written
18 objection. Such written objection shall not include the name or
19 identifying information of the witness, nor the grounds upon which that
20 party believes the evidence is not relevant or admissible.

21 (c) Upon the filing of an objection under subdivision (4)(b) of this
22 section, the court shall conduct an in camera hearing regarding such
23 motion. Only the parties shall be permitted to be present at such
24 hearing. The record of such hearing shall be sealed and preserved to be
25 made available to the appellate court in the event of an appeal, and the
26 contents shall not otherwise be revealed without a court order. Such
27 hearing shall be conducted no fewer than seven days before any scheduled
28 deposition in which a party seeks to adduce evidence pursuant to this
29 subsection. At such hearing, the moving party shall state the grounds
30 upon which the moving party believes such evidence may be relevant and
31 admissible.

1 (d) The court shall allow questioning described in subdivision (4)
2 (a) of this section if the court finds that such testimony could be
3 relevant and admissible at trial.

4 (5)(a) (4)(a) A sexual assault victim may request to have an
5 advocate of the victim's choosing present during a deposition under this
6 section. The prosecuting attorney shall inform the victim that the victim
7 may make such request as soon as reasonably practicable prior to the
8 deposition. If the victim wishes to have an advocate present, the victim
9 shall, if reasonably practicable, inform the prosecuting attorney if an
10 advocate will be present, and, if known, the advocate's identity and
11 contact information. If so informed by the victim, the prosecuting
12 attorney shall notify the defendant as soon as reasonably practicable.

13 (b) An advocate present at a deposition under this section shall not
14 interfere with the deposition or provide legal advice.

15 (c) For purposes of this subsection, the terms sexual assault
16 victim, victim, and advocate have the same meanings as in section
17 29-4309.

18 (6) (5) A deposition taken pursuant to this section may be used at
19 the trial by any party solely for the purpose of contradicting or
20 impeaching the testimony of the deponent as a witness.

21 **Sec. 3.** Original sections 27-412 and 29-1917, Revised Statutes
22 Cumulative Supplement, 2024, are repealed.